IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

WP(C).No. 24149 of 2007(Y)

PETITIONER:

1. K.AJAYAKUMAR,
ASSISTANT ENGINEER, K.S.E.B., T.C.SECTION,
MATTANNUR, KANHIRODE, KANNUR.

2. BABU PAUL,
ASSISTANT ENGINEER, K.S.E.B., T.C.SECTION,
KALAMASSERY, ERNAKULAM.

BY ADV. SRI.C.K.SREEJITH
SRI.P.BENNY JOSEPH

RESPONDENTS:

KERALA STATE ELECTRICITY BOARD,
REP. BY ITS CHAIRMAN.

ADDITIONAL RESPONDENTS:

ADDL.R2. STATE OF KERALA, REP. BY THE SECRETARY TO GOVERNMENT, DEPARTMENT OF ELECTRICITY.

IMPLEADED AS PER ORDER ON I.A.NO.12101/07 DT. 12.9.2007.

ADDL.R3 B.REMESH BABU,
ASSISTANT ENGINEER,
ELECTRICAL SECTION (CENTRAL),
POWER HOUSE ROAD, ERNAKULAM.

ADDL.R4 T.A.MOHAMMED KUNJU,
ASSISTANT ENGINEER,
110 KV SUB STATION, EDAYAR.

ADDL.R5 M.N.RAVEENDRAN,
ASSISTANT ENGINEER,
110 KV SUBSTATION,
VYTTILA.

ADDL.R6 M.M.IBRAHIMKUTTY,
ASSISTANT ENGINEER,
110 KV SUBSTATION,
EDAPPALLY.

ADDITIONAL RESPONDENTS 3 TO 6 ARE IMPLEADED AS PER ORDER ON I.A.NO.12057/07 DT. 12.9.2007.

BY ADV. SRI. ASOK M.CHERIYAN, SC, KSEB
ADDL.R2 BY GOVT. PLEADER SRI.NANDAKUMAR
ADDL.R3 TO R5 BY ADV.SRI.S.RAMESH BABU

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION, ALONG WITH WPC NOS.25993/07 AND CONNECTED CASES ON 12/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V.GIRI, J.

W.P.(C).Nos.24149, 25993, 26397 & 26961 of 2007

Dated this the 12th day of September, 2007.

JUDGMENT

Common issues have emerged in all these writ petitions and therefore, they are being disposed of by common judgment.

2. **W.P.(C)No.26397/07** is taken as the leading case for the purpose of convenience. Facts in the other writ petitions are almost the same.

3. The petitioners are presently working as Assistant Engineers in the Kerala State Electricity Board. Respondents 4 to 7 are also Assistant Engineers. Petitioners are graduate engineers, directly appointed as Assistant Engineer in the year 1981. Respondents 4 to 7 are diploma holders appointed as Sub Engineers and later promoted as Assistant Engineers during 2000. The petitioners are, therefore, seniors to respondents 4 to 7 in the cadre of Assistant Engineer, the petitioners contend, going by Rule 27 A of the Kerala State and Subordinate Service Rules .

4. From the post of Assistant Engineer to that of Assistant Executive Engineer, the promotions are governed by orders issued by the Electricity Board from time to time. As stated

above, respondents 4 to 7 are diploma holders. There is a ratio of 3 : 1 prescribed for promotion to the post of Assistant Executive Engineer, among the degree holders- Assistant Engineers and diploma holders- Assistant Engineers.

5. Since a ratio has been prescribed, the same has been adhered to and separate seniority lists are prepared for degree holders Assistant Engineers and diploma holders Assistant Engineers. What is to be looked into for further promotion to the post of Assistant Executive Engineer is the inter se seniority among the two wings of Assistant Engineers.

6. Apparently, the grievance of the petitioners is that in enforcement of the said ratio for the purpose of promotion to the post Assistant Executive Engineer, there is a situation that Assistant Engineers - diploma holders who came into the category of Assistant Engineer in the year 2000 are now poised for promotion to the post of Assistant Executive Engineer, notwithstanding the fact that the petitioners who are degree holders commenced service in the year 1998 in the cadre of Assistant Engineers. In short, the petitioners' contention is that

the seniority among Assistant Engineers for the purpose of promotion to the post of Assistant Executive Engineer must be reckoned with reference to the date on which they entered service in the post of Assistant Engineer and if it is so reckoned, the petitioners are senior to respondents 4 to 7 and therefore, they be promoted ahead of respondents 4 to 7.

7. In effect, the contention of the petitioners seems to be that there should be a common seniority list among Assistant Engineers, ignoring the fact that there is a ratio of 3:1 prescribed, between the degree holders and diploma holders amongst Assistant Engineers for promotion to the post of Assistant Executive Engineer. These two categories have been considered as water-tight compartments in a bench decision of this court, wherein it was made clear that what is relevant for the purpose of deciding the question of promotion to the post of Assistant Executive Engineer is the inter se seniority among the diploma holders Assistant Engineers and degree holders Assistant Engineers. If two such mutually exclusive categories are maintained, it would obviously not be possible to have a

combined seniority list, which in effect is what is sought for by the petitioners.

8. On instructions, learned standing counsel appearing on behalf of the Electricity Board contends that the claim made by the petitioners, the degree holders-Assistant Engineers is covered against them as specifically held by a Bench decision of this court reported in **Kerala Irrigation Engineers Association v. State of Kerala {2003 (3) K.L.T. 325}** wherein the same question was actually considered. He also referred to the decision of the Supreme Court in **Chandravathi v. Saji {2004 (2) K.L.T. 320}** and **Subaida Beevi v. State of Kerala {2005(1) K.L.T. 426}.** In **Chandravathi's** case**,** the Supreme Court held, with reference to the Special Rules for the Kerala Engineering Service, that separate seniority lists were being maintained in respect of the degree holders, diploma holders and certificate holders. Once a diploma holder acquiring a qualification of a degree in Engineering opts for being included in the stream of degree holders, he would have to be placed at the bottom of the seniority list. Rejecting the contention that this

would bring about an arbitrariness, it was held that State as an employer is entitled to fix separate quota for promotion for the degree holders, diploma holders and certificate holders in exercise of its rule making power under Article 309 of the Constitution of India. Such a rule is not unconstitutional. The State cannot be said to have acted arbitrarily by giving an option to such diploma holders who acquire a higher qualification so as to enable them either to opt for promotion in the category of degree holder or diploma holder. Such option was to be exercised by the concerned officer only. He, in a given situation, may feel that he would be promoted in the diploma-holders' quota earlier than the degree holders' quota and vice versa, but one he opts to step into any other category, he would be placed at the bottom of the list. The principle is that on prescription of a quota amongst two different categories, all persons occupying the same post, for promotion to the next higher post, they are to be treated as Watertight compartments and a combined seniority list, therefore, cannot be contemplated.

9. Sri. Ramesh Babu appearing on behalf of the persons who have sought to get themselves impleaded in all the three writ petitions, referred to the counter affidavit in W.P.(C) No.24159/07, which would be relevant in all the cases. It is contended that in terms of Board orders dated 13.7.1067 and 9.12.1970, the post of Junior Engineer, subsequently re-designated as Assistant Engineer has to be filled up from among Sub Engineers holding diploma qualifications to the extent of 30%. In terms of the aforesaid orders, those respondents as Sub Engineers, having diploma in Engineering were entitled to be promoted as Assistant Engineers in the 30% quota. There was delay in filling up the said 30% quota and apparently, according to the impleading respondents, they were promoted as Assistant Engineers in the 30% quota only in July, 2000. They claim that they are entitled to promotion from the date on which vacancies in the 30% quota arose. Apparently, this contention is raised, for the purpose of demonstrating that the petitioners really have no cause for a heartburn solely by reason of the fact that the contesting respondents came into the category of Assistant

Engineer at a point of time later than the petitioners' entry to the post of Assistant Engineers. It is further contended that since adherence to the ratio 3:1 between degree holders and diploma holders in the matter of promotion from the post of Assistant Engineers to Assistant Executive Engineers has not been assailed or challenged in the writ petitions, it may not be possible for the petitioners to claim that persons junior to them, in the quota of diploma holders, should not be permitted to be promoted ahead of them to the post of Assistant Executive Engineers. The contention seems to be that the question of inter se seniority will have to be decided by treating the degree holders as one wing and the diploma holders on the other and all what is required is to adhere to the rule which is statutorily declared i.e. 75% to the degree holders and 25% for the diploma holders. It is not the case of the petitioners that this quota has been violated or is proposed to be violated as such.

10. Mr.Jaju Babu, appearing on instructions in W.P.(C)No.26397/07 brought to my attention the decision of the Supreme Court in **Shailendra Dania and others v. S.P.Dupey**

and others {2007(5) S.C.C. 535}. He made a particular reference to paragraph 44 of the judgment, which is extracted hereunder:

> **"After having an overall consideration of the relevant Rules, we are of the view that the service experience required for promotion from the post of Junior Engineer to the post of Assistant Engineer by a degree-holder in the limited quota of degree-holder Junior Engineers cannot be equated with the service rendered as a diploma-holder nor can be substituted for service rendered as a degree-holder. When the claim is made from a fixed quota, the condition necessary for becoming eligible for promotion has to be complied with. The 25% specific quota is fixed for degree-holder Junior Engineers with the experience of three years. Thus, on a plain reading, the experience so required would be as a degree-holder Junior Engineer. 25% quota for promotion under the rule is assigned to degree-holder Junior Engineers with three years' experience, whereas for diploma-holder Junior Engineers eight years' experience is the requirement in their 25% quota. Educational qualification along with number of years of service was recognised as conferring eligibility for promotion in the respective quota fixed for graduates and diploma-holders. There is watertight compartment for graduate Junior**

> **Engineers and diploma-holder Junior Engineers. They are entitled for promotion in their respective quotas. Neither a diploma-holder Junior Engineer could claim promotion in the quota of degree-holders because he has completed three years of service nor can a degree-holder Junior Engineer make any claim for promotion quota fixed for diploma-holder Junior Engineers. Fixation of different quota for promotion from different channels of degree-holders and diploma-holders itself indicates that service required for promotion is an essential eligibility criterion along with degree or diploma, which is service rendered as a degree-holder in the present case. The particular years of service being the cumulative requirement with certain educational qualification providing for promotional avenue within the specified quota, cannot be anything but the service rendered as a degree-holder and not as a diploma-holder. The service experience as an eligibility criterion cannot be read to be any other thing because this quota is specifically made for the degree-holder Junior Engineers."**

11. I have heard learned counsel for the petitioners, learned standing counsel for the Electricity Board and learned counsel for the contesting respondents 4 to 7, who got themselves impleaded in the writ petitions.

12. In my opinion, the substantial contention raised by the petitioners, that persons who are juniors to them in the category of Assistant Engineers, who hold diplomas, are being sought to be promoted to the post of Assistant Executive Engineers, really seems to be covered by the decision of the Division Bench in **Kerala Irrigation Engineers Association v. State of Kerala {2003(3) K.L.T. 325}**, which dealt with similar issues. The ratio considered therein was that prescribed among Assistant Executive Engineers in the civil and general branch of the Engineering Service of the Government. "The ratio as fixed in Rule 5(b) of the Special Rules applies to the whole cadre and the Rule postulates that the posts of Assistant Executive Engineers have to be filled up from three sources in the ratio of 75 : 20 : 5." The Bench held that "separate seniority list will have to be maintained and the rules make separate channel of promotion. The obvious intention is that if a post is vacated by a degree holder, it shall be filled up by appointment of an Assistant Engineer, who is a 'graduate' in Engineering". The same principle holds good for diploma holders. The bench,

therefore, held that "the Rules lay down three separate sources and for each category the share has to be maintained continuously." In other words, the right to be considered for promotion to the post of Assistant Executive Engineer by an Assistant Engineer, will have to be exercised within the quota and cannot be sought to be exercised against a quota that is allotted to a diploma holder or a degree holder, as the case may be. If this principle is not violated, it is obvious that there is no cause for a challenge, at the instance of the petitioners.

13. In my opinion, paragraph 44 of the decision of the Supreme Court in **Shailendra Dania and others v. S.P.Dupey and others {2007(5) S.C.C. 535}** lays down the same principle applicable to cases where there is a ratio prescribed, for persons occupying posts in the feeder category, for the purpose of promotion to another post. Thus the prescription of the ratio will have to be treated as providing for a plurality of sources of recruitment. In such cases, what is relevant is the inter se seniority in one particular source and it will have to be maintained as a watertight compartment. The

Supreme Court was concerned with the question as to whether the service rendered by a diploma holder before acquiring a degree and seeking to step into the category of degree holders, should be taken into account for determining whether he is eligible for promotion to the higher post. The principle of degree holders and diploma holders being treated as separate watertight compartments seems to be the ratio behind what has been held by the Supreme Court in the aforementioned decision.

14. Mr.Jaju Babu then contended that there is an anomaly resultant upon a situation that a junior Assistant Engineer, holding a diploma, (seniority reckoned with reference to the persons who entered as an Assistant Engineer) should be in a better position to be promoted to the post of Assistant Executive Engineer and this is something which could be prevented by the rule making authority providing that in the course of implementing the ratio for the purpose of promotion to the post of Assistant Executive Engineer, the seniority of Assistant Engineer in the said cadre should not be permitted to be overlooked while promoting a diploma holder Assistant Engineer.

He says that this anomaly has been taken care of in the Engineering Service Rules where a specific provision is made in the aforesaid Rule. The Special Rules governing the post of Assistant Executive Engineer, which are orders issued by the Board adopting the Rules in Engineering Service Rules do not provide for such a proviso in the case of Assistant Engineers. Prescription of a ratio and adherence to the same are matters within the domain of the Rule Making Authority. No doubt, if the Board order had contained a prescription that the inter se seniority of Assistant Engineers as a class should not be overlooked in the course of enforcing the prescription of the quota, then the said proviso would not have been interferred with. Unfortunately, for the petitioners, there is no such proviso. The ratio is 3:1 inter se between graduate engineers and diploma engineers and separate seniority lists are to be prepared. There is no saving clause saving the inter se seniority of a graduate engineer on a comparison with the diploma holders Assistant Engineers. For all the reasons, mentioned above, I find that there

are no grounds for issuance of any direction to the Electricity Board.

The writ petitions are, therefore, dismissed, but without any order as to costs.

Sd/-
(V.GIRI)
JUDGE

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P.S. To Judge